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### Rodrigo's Fourteenth Chronicle: American Apocalypse

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# RODRIGO'S FOURTEENTH CHRONICLE:

## AMERICAN APOCALYPSE

*Richard Delgado\**

### Introduction: In Which I Pay a Surprise Visit to Rodrigo's Law School

“Hee-hee . . .” I caught myself muttering under my breath with a childish excitement unbecoming someone my age as I walked up the last few stairs to Rodrigo’s<sup>1</sup> fourth floor office. In the past, my young *enfant*

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\* Charles Inglis Thomson Professor of Law, University of Colorado. J.D., University of California-Berkeley, 1974. I am grateful to New York University Press for permission to adapt portions of my fall 1996 book, *THE COMING RACE WAR? AND OTHER APOCALYPTIC TALES OF AMERICA AFTER WELFARE AND AFFIRMATIVE ACTION*. Rodrigo’s fans will find therein further dialogues dealing with empathy and false empathy, citizenship, the cosmopolitan ideal, and America’s racial future. This Article is dedicated to Giannina.

<sup>1</sup> Richard Delgado, *Rodrigo’s Chronicle*, 101 YALE L.J. 1357 (1992) [hereinafter Delgado, *Rodrigo’s Chronicle*] (introducing my interlocutor and alter ego, Rodrigo). The son of an African American serviceman and Italian mother, Rodrigo was born in the United States but was raised in Italy while his father was assigned to a U.S. outpost there. Rodrigo graduated from the base high school, then attended an Italian university and law school on government scholarships, graduating second in his class. When the reader initially meets him, he has returned to the United States to investigate master of law (LL.M.) degree programs. At the suggestion of his sister, famed U.S. civil rights lawyer Geneva Crenshaw, see DERRICK BELL, *AND WE ARE NOT SAVED* (1992), he seeks out “the Professor” for career advice. Despite their age difference, the two become good friends discussing, over the next three years, affirmative action and the decline of the West, see Delgado, *Rodrigo’s Chronicle*, *supra*; law and economics, see Richard Delgado, *Rodrigo’s Second Chronicle: The Economics and Politics of Race*, 91 MICH. L. REV. 1183 (1993); love, see Richard Delgado, *Rodrigo’s Third Chronicle: Care, Competition, and the Redemptive Tragedy of Race*, 81 CAL. L. REV. 387 (1993); legal rules, see Richard Delgado, *Rodrigo’s Fourth Chronicle: Neutrality and Stasis in Antidiscrimination Law*, 45 STAN. L. REV. 1133 (1993); the critique of normativity, see Richard Delgado, *Rodrigo’s Fifth Chronicle: Civitas, Civil Wrongs, and the Politics of Denial*, 45 STAN. L. REV. 1581 (1993); relations between men and women, see Richard Delgado, *Rodrigo’s Sixth Chronicle: Intersections, Essences, and the Dilemma of Social Reform*, 68 N.Y.U. L. REV. 639 (1993) [hereinafter Delgado, *Sixth Chronicle*]; enlightenment political theory, see Richard Delgado, *Rodrigo’s Seventh Chronicle: Race, Democracy, and the State*, 41 UCLA L. REV. 721 (1994); black crime, see Richard Delgado, *Rodrigo’s Eighth Chronicle: Black Crime, White Fears—On the Social Construction of Threat*, 80 VA. L. REV. 503 (1994) [hereinafter Delgado, *Eighth Chronicle*]; narrative jurisprudence, see Richard Delgado, *Rodrigo’s Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence*, 68 S. CAL. L. REV. 545 (1995) (final chronicle in first series and final chapter of RICHARD DELGADO, *THE RODRIGO CHRONICLES* (1995)); the rule of law, see Richard Delgado, *Rodrigo’s Ninth Chronicle: Race, Legal Instrumentalism, and the Rule of Law*, 143 U. PA. L. REV. 379 (1994); affirmative action, see Richard Delgado, *Rodrigo’s Tenth Chronicle: Merit and Affirmative Action*, 83 GEO. L.J. 1711 (1995) [hereinafter Delgado, *Tenth Chronicle*]; and clinical theory, see Richard Delgado, *Rodrigo’s Eleventh Chronicle: Empathy and False Empathy*, 84 CAL. L. REV. 61 (1996) [hereinafter Delgado, *Eleventh Chronicle*]. During this period, the brash and talented Rodrigo earns his LL.M. degree and embarks on his

*terrible* had made a practice of dropping in on me unexpectedly, materializing (and once even dematerializing) as though out of nowhere. Now, I found myself in Rodrigo's city, thanks to a meeting of a regional legal services organization on whose board I had recently agreed to serve. With a little free time on my hands, I had taken the airport shuttle directly to his school to see how he was doing. And here I was, knocking on his door unannounced and feeling more than a little conspiratorial.

"Professor!<sup>2</sup> What a surprise! Come on in. What brings you to the Midwest?"

"Quite a turnabout, isn't it?" I beamed, stepping inside and shaking his hand warmly. "I'm here for a meeting. I hope you're not too busy for a few minutes with your old professor."

"Never," he replied, gesturing for me to have a seat on his couch. "Let me just get rid of this call." Picking up the phone, which was lying on its side on his desk, he said, "And make that five rooms with no feather pillows, please."

"Oh," I said. "You must be working on that conference. I saw the signs on all the doors."

"I am. It's the regional meeting of professors of color. It started just last night with a dinner and plenary. I'm the local arrangements person, and two professors from Wisconsin are in charge of the program. The last two weeks of my life have been filled with handling requests for pillows, special meals, and late registrations. People are still checking in even though we just finished the morning session."

"Are you getting any help?"

"Giannina and Laz,<sup>3</sup> my conservative friend I introduced you to a while back, are helping out. And the Dean's office staff has been great."

"I went to the Critical Race Theory workshop last summer," I said. "It turns out I'm something of a senior statesman. This isn't the same group, is it?"

"No, although some of the same folks are here. It's not quite so high-powered—mostly young professors who read each other's papers and offer support."

A rattle outside the door interrupted us. Two uniformed young people stood expectantly behind a gleaming cart. "Right down the hall in the faculty lounge, please," Rodrigo indicated, then to me, "They're the ca-

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first teaching position. The reader also meets his friend and soulmate Giannina and learns that his family on his father's side had immigrated to America via the Caribbean. His father, Lorenzo, looks and identifies as black but speaks perfect Spanish.

<sup>2</sup> Like Rodrigo, the Professor is a fictional character not to be identified with any person alive or dead. As I have created him, the Professor is a man of color teaching law at a major institution in the late stages of his career.

<sup>3</sup> See Delgado, *Tenth Chronicle*, *supra* note 1 (introducing Laz Kowalsky, Rodrigo's colleague and friend).

terers. We're having a reception in exactly fifteen minutes. Can you join us?"

"I wish I could. But I have business later with the board. Our meeting tomorrow is over at noon though. Maybe I'll come by if you allow drop-ins."

"For you, of course," Rodrigo replied graciously. "Here's tomorrow's program. As you can see, the afternoon session starts at one. When do you fly back?"

"Seven-thirty," I said, scanning the program. "What did I miss at the opening session?"

"Not much. The Dean gave a speech. Then the Wisconsin people spoke, summarizing national developments since last year's meeting."

"Including the conservative surge and attack on affirmative action, I imagine?" I asked.

"Yes, the whole range of right-wing advances, beginning with the rollback of affirmative action<sup>4</sup> and diversity programs on college campuses.<sup>5</sup> They went on to outline the attack on minority scholarships,<sup>6</sup> ethnic studies programs,<sup>7</sup> and professors of color.<sup>8</sup> They reviewed how the religious right has been opposing gay rights ordinances, same-sex marriages,<sup>9</sup> and public school classes that discuss human sexuality and orientation;<sup>10</sup> demanding religious education and prayer in schools;<sup>11</sup> and urging official recognition for Christian holidays.<sup>12</sup> They told how conservatives have been reversing women's reproductive liberties,<sup>13</sup> building prisons, supporting 'tough-on-crime' measures,<sup>14</sup> and holding military spending at a high level, even though the world is at peace and we have no major

<sup>4</sup> See, e.g., KENNETH KARST, *LAW'S PROMISE, LAW'S EXPRESSION: VISIONS OF POWER IN THE POLITICS OF RACE, GENDER, AND RELIGION* 103-11, 203-05 (1993).

<sup>5</sup> See, e.g., DINESH D'SOUZA, *ILLIBERAL EDUCATION* (1992) (analyzing multiculturalism and diversity on six university campuses).

<sup>6</sup> See, e.g., *Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir. 1994) (reversing a grant of summary judgment by finding that a state university's scholarship program for African American students was not adequately supported by a strong need for a remedial program and that the program itself was insufficiently tailored to meet its stated goal).

<sup>7</sup> See D'SOUZA, *supra* note 5 at 16, 17, 204-15.

<sup>8</sup> See *id.*

<sup>9</sup> See KARST, *supra* note 4, at 14, 18, 20, 57-66, 182-87 (discussing conservative opposition to homosexual rights movements and gay marriage).

<sup>10</sup> See Mark Shields, *Where Dole is No Reagan*, WASH. POST, Sept. 2, 1995, at A19 (discussing conservative efforts to ban homosexuals from teaching in public schools).

<sup>11</sup> See KARST, *supra* note 4, at 28, 148, 154-55, 158 (describing the religious right's efforts to legalize school prayer and religious education in public schools).

<sup>12</sup> *Id.* at 148, 150, 154-57, 159-60 (discussing conflict over official recognition of religious holidays); see also DENV. POST, Nov. 22, 1994, at A9 (full-page advertisement urging a national day of prayer).

<sup>13</sup> See KARST, *supra* note 4, at 31, 40-43, 50-57 (describing efforts of the religious right and the pro-life movement to ban abortion).

<sup>14</sup> See Delgado, *Eighth Chronicle*, *supra* note 1 (discussing the relationship between racism, law, and crime legislation).

enemies anywhere.<sup>15</sup> They've been enacting repressive immigration measures and English-only laws,<sup>16</sup> reforming the tort system to limit recoveries by consumers injured by defective products or doctors who commit malpractice.<sup>17</sup> They've also been reducing social welfare for the poor<sup>18</sup> and proposing legislation to cut off all federal funding for the arts."<sup>19</sup>

"Sounds sobering, especially when you hear it all at once," I said. "Was your friend Kowalsky there?"

"He was. I sat next to him. It's interesting—he was actually smiling and nodding over some of the remarks, even though everyone else was frowning. Afterwards, he got into a furious argument with Jody Elmour over welfare cuts. In fact, they're in the faculty lounge right now patching things up."

"I'm glad. Elmour is one of the most brilliant young scholars of color in the country. I loved his Stanford article. And Kowalsky is no slouch either."

"They'll both be back tomorrow," Rodrigo said. "We can ask them how it came out. As things were breaking up last night, Laz asked me to remind him to tell me his theory about a coming race war."

"A race war? I hope I get to hear it. He's sharp. You're lucky to have him as a colleague."

"That I am," Rodrigo acknowledged. "Politically we're poles apart, yet we're good friends. He's humane in his own way. Ask him sometime about his theory of affirmative action based on class."<sup>20</sup>

We both started. Someone was knocking at the door. "Come in," Rodrigo said. A pale, smiling young man dressed in a neat suit stepped inside.

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<sup>15</sup> See Eric Schmitt, *GOP Would Give Pentagon Money It Didn't Request*, N.Y. TIMES, July 5, 1995, at A1 (reviewing high military spending after the end of the Cold War); see also Arthur Hoppe, *Private Drab Finds the Enemy*, S.F. CHRON., July 14, 1995, at A27 (discussing the maintenance of high military spending despite the apparent lack of enemies).

<sup>16</sup> On these and other manifestations of the new nativism, see IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES (Juan F. Perea, ed. 1996) [hereinafter IMMIGRANTS OUT!] (articles describing historical and contemporary incidents of anti-immigrant sentiment in the United States); see also *infra* Part III (on the role Latinos may play in America's racial future).

<sup>17</sup> See Sandra Torry, *Both Sides Tote Up the Votes for Tort Reform Redux*, WASH. POST, Nov. 25, 1996, at F7; see also JEAN STEFANCIC & RICHARD DELGADO, NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA'S SOCIAL AGENDA 96-108 (1996).

<sup>18</sup> See Dana Milbank, *Welfare-Overhaul Legislation, Devised by Republicans, Is Signed by President*, WALL ST. J., Aug. 23, 1996 at A3.

<sup>19</sup> See KARST, *supra* note 4, at 139; Jennifer Corbett & Janet Hook, *Senate Approves Cutting Funds to the Arts, Humanities*, L.A. TIMES, Aug. 10, 1995, at A1; Janet Hook, *Arts, Humanities Cuts Clear House*, L.A. TIMES, July 19, 1995, at A1.

<sup>20</sup> See Delgado, *Tenth Chronicle*, *supra* note 1, at 1745-46 (where Laz discussed affirmative action with his two friends of color).

"Laz! We were just talking about you. Come in. You remember the Professor, don't you?"

"Of course. Welcome to the law school," Kowalsky exclaimed, extending his hand and shaking mine warmly. "I hope you're here for the conference."

"I wish I were," I said. "I'm here for something much more mundane. But I'll try to drop by tomorrow," I said. "I bet your reception is about to start."

"We finished a little early. The Program Chair is about to speak. But there are plenty of seats if you'd like to join us. And there's more than enough food."

"I'd better be going," I announced, standing up. "I have an afternoon meeting and need to check into my hotel first. But I'll be by tomorrow. I want to hear your theory of a race war."

"Rodrigo quotes me too much," Laz said with a smile. "But I'll be happy to run it by you. When do you think you can make it?"

"My meeting ends at noon."

"How about a quick lunch?" Rodrigo suggested, looking at Kowalsky, who nodded enthusiastically.

"I'll do my best," I said.

#### I. In Which Kowalsky Spells out His Thoughts on Welfare Reform and Agrees to Tell his Theory about America's Racial Future

My board meeting went a little long, so by the time the cab dropped me off at Rodrigo's school, the group had already broken for lunch. An empty seminar room, except for neatly arranged tablets and piles of papers and programs, greeted me. Just as I was wondering where everyone had gone, I heard a pair of familiar voices. Rodrigo and Kowalsky were walking down the hall engaged in an animated conversation.

"Professor! We were wondering if you would make it. Can you still join us for lunch?"

"You bet," I said. "These legal services meetings are truly bare bones. All I've had since last night is coffee and a bagel. I'm starved."

The two friends consulted quickly, then Rodrigo asked, "How about southwestern, Professor? We could walk over to this little place in the shopping center nearby. The others are eating in the conference dining room. We've got almost an hour and a half before the afternoon session starts."

"Are you sure we shouldn't eat with the group?" I asked.

"Positive," Rodrigo replied. "Giannina is sitting in with them. The three of us locals are taking turns keeping them company."

"Shopping center food sounds fine to me. It'll save time, and I love Southwestern. I'd like to hear about your discussion with Elmour. And you agreed to tell us more about your theory of race riots."

Kowalsky looked puzzled. "Oh, you mean a race war. I'm glad to do so although it doesn't exactly make my fellow conservatives look good. You must understand it's just a hypothesis," he explained as we waited for a break in the traffic.

"Laz is an equal opportunity trasher," Rodrigo said, giving his friend an affectionate pat on the back. "He's as tough on mean-spiritedness in the conservative camp as he is on lack of rigor on our side. Here we are."

A few minutes later, we were examining the menu in what turned out to be a plain but attractive natural food restaurant. "Not bad for a shopping center menu," I conceded. "What do you recommend?"

"Southwestern's their specialty," Rodrigo replied. "I'm having the menudo. Giannina loves this place."

"I think I'll try that too," Kowalsky said. "And to answer your question, Professor, Elmour and I had a good long talk. He made a number of points at my expense, although it turns out we're not as far apart as you might think. It seems his father was a Baptist minister and his mother a social worker. Oh, here's our waiter."

I quickly scanned the menu, while my two young friends placed their orders. "What do you think of the grilled vegetables?" I asked. "I've been cutting down on meat. Doctor's orders."

Rodrigo made a sympathetic face and said, "I've never had them, but everything here's good." I nodded to the waiter. "I'll have that," I said, and he departed.

After a short pause while a second waiter put down our chips and salsa, Kowalsky continued, "Anyway, we ended up agreeing on more than you might think."

"So now you're a povertarian?" Rodrigo replied with surprise. "I thought you believed that handouts sap initiative."

"I do," Kowalsky said. "And so society should cut back sharply, except of course for the permanently disabled or mothers with very small children. The Constitution doesn't guarantee happiness, or even that you won't go hungry. If people don't want to work or are content with very little, that's their business, not the government's. Poverty is the greatest incentive to find work. Why eliminate it?"

"And Elmour agreed with you on this?" Rodrigo asked.

"Not exactly. What we agreed on was that the government should also eliminate subsidies for the middle class,<sup>21</sup> military bureaucracies,<sup>22</sup>

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<sup>21</sup>Maureen Harrington, *Welfare Myths Rampant: Perceptions of Poor Clouded By Emotion*, DENV. POST, June 19, 1995, at A1 (citing budget data suggesting that compared to the large amount of money spent on Social Security and Medicare, welfare programs for the poor receive very little funding).

<sup>22</sup>MARK ZEPEZAUER & ARTHUR NAIMAN, TAKE THE RICH OFF WELFARE 13-14 (1996) (reporting that the Department of Defense's budget for fiscal year 1996 is \$265 billion, or 5% of our gross national product, the largest percentage of any industrialized country).

and U.S. corporations.<sup>23</sup> He had done his homework. He showed me a computer printout demonstrating the amount of money federal and state governments spend propping up failing farms<sup>24</sup> and businesses<sup>25</sup> and subsidizing middle-class homeowners,<sup>26</sup> military weapon systems that don't work,<sup>27</sup> and entitlement programs for the middle-class,<sup>28</sup> many of whom haven't worked a day in their lives. They spend more on these sectors than on inner city blacks, unwed mothers, and other supposed beneficiaries of welfare.<sup>29</sup> The national farm surplus was one of his prime examples.<sup>30</sup> Sugar quotas and tax subsidies for entertainment expenses for businessmen were others.<sup>31</sup> Adding in all these figures, tax breaks for middle-class homeowners<sup>32</sup> and bailouts for corrupt Latin American regimes<sup>33</sup> and U.S. corporations yielded a total considerably higher, both on a per capita and an aggregate basis, than all we pay for the country's poor."<sup>34</sup>

"So we have welfare for the rich," I said, "except we don't call it that."

"Exactly," Kowalsky replied. "To be consistent, we should either cut all subsidies or none at all. I personally favor cutting all of them. Our society works best when people and industries rise or fall on their own merits. This is just as true for white CEO's as for black welfare mothers. The sole exceptions should be the truly helpless and perhaps those who can show they have suffered unjust discrimination. I don't mean to be hard-hearted, but that's the theory of free enterprise, and it has brought us the highest standard of living in the world."

<sup>23</sup> *Id.* at 6 (finding that the federal government spends \$448 billion a year in corporate welfare, while spending only \$130 billion in welfare for the poor).

<sup>24</sup> *Id.* at 68 (citing that more than \$18 billion is spent on agricultural subsidies).

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Id.* at 52 (reporting that two-thirds of the mortgage interest deduction benefits go to families with incomes of \$75,000 or more).

<sup>27</sup> *Id.* at 13-14.

<sup>28</sup> Harrington, *supra* note 21, at A1.

<sup>29</sup> ZEPEZAUER & NAIMAN, *supra* note 22, at 6, 157 (noting the discrepancies between the government's spending on corporate and social welfare and that Aid to Families with Dependent Children only costs the government \$18 billion per year); Jackie Calmes, *Bold Talk on "Corporate Welfare" Cuts Fades as Political Campaigns Heat Up*, WALL ST. J., Mar. 20, 1996, A2 (predicting that both Congress and the President are unlikely to make cuts in corporate welfare due to the large campaign contributions coming from business and industry); Harrington, *supra* note 21, at A1; Ray Santisteban, *Aid to Dependent Corporations*, BALTIMORE SUN, Mar. 4, 1997, at 7A (stating that 60% of U.S. corporations paid no federal taxes in 1991 and that if business tax subsidies were eliminated, the yearly federal deficit would be eliminated).

<sup>30</sup> ZEPEZAUER & NAIMAN, *supra* note 22, at 68.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 52.

<sup>33</sup> Dudley Althaus, *Viva Clinton!: Mexican Officials, Investors Rejoice*, HOUS. CHRON., Feb. 1, 1995, available in 1995 WL 5878025 (detailing the United States' bailout plan for the Mexican economy, which includes over \$20 billion from the United States alone).

<sup>34</sup> ZEPEZAUER & NAIMAN *supra* note 22, at 6, 157; Calmes, *supra* note 29, A2; Harrington, *supra* note 21, at A1; Santisteban, *supra* note 29, at 7A.



"Sixth highest, actually," Rodrigo corrected.<sup>35</sup>

"Depends on how and what you count," Kowalsky countered.

"Speaking of discrimination," I said, "Rodrigo reminded me to ask you sometime about your theory of affirmative action. Also, you were going to tell us about a coming race war."

"Oh, right," Kowalsky replied. "As it turns out, I can do both at the same time. They're related to cutbacks in welfare too, since they're both concerned with tightening the screws on your constituents."

The waiter arrived with our plates. "That looks good," I said, scrutinizing my vegetables and wishing there was a little meat on the side. Then, Kowalsky leaned forward in his chair. "As you know, I'm an equal opportunity critic. I do have a theory although I'd like the two of you to agree not to represent it as anything more than that. I don't want to seem too hard on some of my fellow conservatives."

Both Rodrigo and I nodded. "We'll take it in that spirit," I promised.

## II. Kowalsky's Theory: The Upcoming Race War

Assured of our promises, Kowalsky began: "Have you ever wondered why my fellow conservatives seem bent on eliminating affirmative action? I mean, not simply cutting it back but eliminating it root and branch?"

Rodrigo and I looked at each other. "I assume out of principle," I said with a shrug.

"And to cater to their constituencies," Rodrigo added.

"I'm not so sure," Kowalsky replied. "Especially as to the latter. Many corporations that initially opposed affirmative action now support it. They find it's not so bad for business. The new workers fit right in, and the firm gains credibility in new sectors of the population. As for the principled reasons, we all know what arguments conservative theorists give for opposing it. I subscribe to some of them, as you know, although in my opinion they call for restructuring, not eliminating the program."

Rodrigo interjected: "So if it's not because of corporate pressure or killer reasons of principle, why *do* conservatives want to put an end to affirmative action?"

"I was thinking about this after my argument with Elmour. In a way, affirmative action is the perfect issue for my side. It never goes away. It reliably delivers votes. And it enables people like me to point out how unprincipled you liberals are and how we are morally superior. It's easy to attack it in a 30-second sound bite. But defending it takes 45 minutes, while the public's eyes glaze over. It has been the perfect vote getter year after year. Yet, my fellow conservatives at think tanks, leadership insti-

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<sup>35</sup> *U.S. Trails in Standard of Living: Index Compares Competitiveness of Major Industrialized Economies*, DALLAS MORNING NEWS, Aug. 3, 1995, at D2.

tutes, and other elite circles across the land are trying to get rid of it decisively and forever. Initiatives in California and elsewhere, bills in Congress . . . ."<sup>36</sup>

"And those three recent Supreme Court decisions," Rodrigo interjected.

"Right," Kowalsky replied. "Making it harder for states to redraw voting districts to increase minority representation,<sup>37</sup> making it easier for school districts to end desegregation plans,<sup>38</sup> and applying the higher, constitutional standard of compelling state interest to federal affirmative action programs<sup>39</sup>—not to mention the Fifth Circuit decision in *Hopwood*, which bars any consideration of race in higher education admissions.<sup>40</sup> All these give evidence of the same thing: the political right is prepared to destroy affirmative action once and for all."

"And you think this is more than just muscle flexing?" I asked. I was curious where the young conservative *wunderkind* was going.

"I do," Kowalsky continued. "Otherwise the right would opt for a series of gradual cutbacks, and not sweeping measures like California's Civil Rights Initiative. Affirmative action enables my side to argue that we are the defenders of the just and the true. It reliably inflames working class and ethnic whites, who are led to believe that blacks are getting away with something."

"Even though the levels of school drop-outs, unemployment, suicide, poverty and infant mortality for minority communities are the highest in the country and approaching those of the Third World," Rodrigo added.<sup>41</sup>

"And your people still lag in undergraduate and graduate enrollment,"<sup>42</sup> Kowalsky went on, "as well as in middle and upper management

<sup>36</sup> On the California Civil Rights Initiative (Proposition 209), which prohibits most forms of state-sponsored affirmative action, see Charles Oliver, *Next Hot Button in California: Anti-Quota Ballot Initiative Presages National Debate*, INVESTOR'S BUS. DAILY, May 9, 1995, at A1. On other proposals, see Edward W. Lempinen, *Proposition 209 Takes National Stage: Uncertain Receptions Await Anti-Affirmative Action Drives*, S.F. CHRON., Dec. 16, 1996, at A1 (discussing federal measures and California ballot initiative to end affirmative action).

<sup>37</sup> See *Miller v. Johnson*, 115 S. Ct. 2475 (1995).

<sup>38</sup> See *Missouri v. Jenkins*, 115 S. Ct. 2038 (1995).

<sup>39</sup> See *Adarand Construction, Inc. v. Secretary of Transportation*, 115 S. Ct. 2097 (1995).

<sup>40</sup> See *Texas v. Hopwood*, 84 F.3d 720 (5th Cir. 1996), *cert. denied*, 116 S. Ct. 2581 (1996).

<sup>41</sup> For these and other statistics documenting black misery, see ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* 256-62 (1995). Recently, the United States surpassed Great Britain as the western industrialized country with the greatest gap between rich and poor. *Gap Between Rich, Poor is Biggest in U.S., Study of 17 Wealthy Nations Finds*, L.A. TIMES, Oct. 29, 1995, at A4; see also *Infant Mortality Falls, But Racial Gap Grows*, CHI. TRIB., July 10, 1995, at 7; *Top Countries for Quality of Life*, WASH. POST, Nov. 5, 1991, at B5 (United States ranks low in life expectancy, infant health, and similar measures of personal and economic well being).

<sup>42</sup> HACKER, *supra* note 29, at 129, 260.

jobs<sup>43</sup> and virtually every circle that matters—except sports and entertainment. As I said, it's a perfect issue. It enables people like me to rally the troops and depict liberals as the source of unhappiness and job insecurity for blue collar whites like my family."

"And I suppose you have a theory for why your co-religionists are doing this?" I coaxed.

"I think they are gearing up for a race war," Kowalsky said quietly. "It's not a conspiracy, exactly. Rather, it's the product of a general sense that it's time to pick a fight. Caucasians will cease being a majority in this country about midway through the next century.<sup>44</sup> At that point, political and voting power should logically shift to groups of color: African Americans, Asians, and Latinos. White opinionmakers don't want this to happen. So, they're gearing up for a fight. It's one of the oldest tricks in the world: provoke your enemy until he responds, then slap him down decisively.<sup>45</sup> You get to impose your regime and sleep well at night too because you can maintain that it was all his fault."

"So, right-wingers are trying to increase minority misery to the point where we react, to the point where violence breaks out?" I asked incredulously.

"Yes, like the sixties. Only this time, it will be different. The rebellion will be put down just as before. But this time, instead of enacting sympathetic measures, like the Civil Rights Act of 1964, to ameliorate poverty and redress racial injustice, society will put in place repressive acts increasing police surveillance, criminalizing sedition, and establishing martial law. We will then sail into the next century secure. White political and economic power will be assured by a host of new laws and executive orders resembling those of South Africa under the apartheid regime. The new redistricting decision is just the first of many such rulings that will prevent blacks and Latinos from ever obtaining political power. And gatherings, organizing, and street marches will be ruthlessly suppressed. The U.S. will have a system of apartheid, in effect, with whites wielding power over a large but increasingly powerless black and brown population of laborers and domestics."

"And the idea is to provoke this confrontation before it is too late?" Rodrigo leaned forward, his expression serious.

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<sup>43</sup> *Id.* at 108, 116–17.

<sup>44</sup> See PETER BRIMELOW, ALIEN NATION 64 (1996) (citing one prediction that whites will be a minority by 2060); Special Issue: *The New Face of America*, TIME, Fall, 1993 [hereinafter Special Issue].

<sup>45</sup> See NICCOLO MACHIAVELLI, THE PRINCE, in 36 THE HARVARD CLASSICS 5, 75 (N.H. Thomson trans., Charles W. Eliot ed., 1910) (writing in 1503 that "a wise Prince, when he has occasion, ought dexterously to promote hostility to himself in certain quarters, in order that his greatness may be enhanced by crushing it").

"Yes, it would need to be done fairly soon before power passes peacefully," Kowalsky replied. "That's why you see everything we were talking about earlier: welfare cutbacks calculated to increase misery in communities of color, voting rights retrenchment, and withdrawal of scholarships that enable future leaders of color to get a college education. We also see attacks on 'big government,' which is seen as an employer and defender of minorities, denials that the recent wave of black church burning means anything, and most of all, the elimination of affirmative action."

"I thought you didn't like big government," Rodrigo interjected.

"I don't," Kowalsky replied. "But there are good reasons and bad reasons to oppose it. Some of my friends on the right oppose it because they see the federal government as having a black face. That's despicable and wrong."

We were silent for a moment. Then Rodrigo said, "I used to think all we had to do was wait, that demography would produce a peaceful change of power sooner or later. You've given me pause."

"A great convulsion, in which whites decisively put down a black insurrection, would be exactly what's needed," Kowalsky said. "And one doesn't need conspiracy theories to understand the host of anti-minority and anti-poor measures that are coming into play right now. Whites have simply decided enough is enough: it's time to take a stand. If millions across the country, as well as conservative elites at dozens of think tanks and institutes, have the same sense—that it's our turn—it produces the same result: everyone agrees tacitly that something must be done. And so the product is a coordinated campaign. It may already have started in California, our most ethnically diverse state."<sup>46</sup>

"Laz," I burst out. "I used to think leftists were paranoid, always afraid the government was spying on their meetings, compiling dossiers on them, and so on. Of course, some of that turned out to be true. But this idea of yours goes further than anything I've heard. For one thing, our legal system and Constitution would never stand for it. We have the Bill of Rights, the Fourteenth Amendment."

"All of which can be overridden by a compelling state interest, as you well know, Professor," Laz replied levelly. "Do you have any doubt the current Supreme Court would find one if civil unrest broke out in every major city across the nation?"

"*Korematsu* could serve as a precedent,"<sup>47</sup> Rodrigo pointed out. "The Court could hold that emergency measures like curfews, surveillance,

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<sup>46</sup>For accounts of California's recent efforts to end affirmative action and public assistance to immigrants, see Patrick McDonnell, *Despite Legal Snags, Prop. 187 Reverbates*, L.A. TIMES, Nov. 8, 1995, at A1; Adam Pertman, *In Calif., Ballot Initiative in Peril*, BOSTON GLOBE, Nov. 3, 1996, at A21.

wiretaps, sweeps, and even preventive detention of leaders of color are justified. We baited the Indians at Wounded Knee until they responded. Then we wiped them out.<sup>48</sup> Unfortunately, more historical precedent supports Laz's grim scenario than any of us would like."

"Our Latino friends could cite the zoot suit riots in the 1940s, when America went through a wave of anti-immigrant, nativist sentiment,"<sup>49</sup> Laz added. "Roving gangs of Anglo sailors started the riots. When Latinos responded, we threw them into jail, charging them with breaching the peace and provoking civil disorder. Congress instituted Operation Wetback, in which tens of thousands of Mexican Americans, many of them legal immigrants or even citizens, were rounded up and deported to Mexico."<sup>50</sup>

"Most Republicans oppose gun control," I pointed out. "Some even favor legalizing assault weapons,<sup>51</sup> even though such weapons have little or no use other than to put down a civil insurrection." And with a chill, I recalled, "Republicans in think tanks and elsewhere favor keeping the military budget high, even though we're at peace. I still think it's crazy, but what explanation can there be for all that hardware other than to prepare for an upcoming domestic war and fortress America?"<sup>52</sup>

"People of color generally don't support guns,"<sup>53</sup> Rodrigo added quietly. "Private militias are virtually always all-white, so assault weapons create

<sup>47</sup> *Korematsu v. United States*, 323 U.S. 214 (1944) (stating that race-based classifications and race-based civil rights restrictions can survive strict scrutiny if the state's interest is compelling enough); see also *Hirabayashi v. United States*, 320 U.S. 81 (1943) (upholding wartime measures targeting Japanese Americans).

<sup>48</sup> See DEE BROWN, *BURY MY HEART AT WOUNDED KNEE* 439-45 (1970); see also ROBERT A. WILLIAMS, JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST* (1990) (documenting a broad pattern of treachery and broken promises in U.S.-Native American relations). Cf. MACHIAVELLI, *supra* note 45, at 9 ("For the Prince, using the rebellion as a pretext will not scruple to secure himself by punishing the guilty, bringing the suspected to trial, and otherwise strengthening his position in the points where it was weak").

<sup>49</sup> See generally IAN F. HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996) (on anti-immigrant uprisings during this period); *IMMIGRANTS OUT!*, *supra* note 16 (discussing anti-immigrant sentiments throughout U.S. history).

<sup>50</sup> See LOPEZ, *supra* note 49, at 38; Michael Olivas, *The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History*, 34 ST. LOUIS U. L.J. 425, 435-39 (1990).

<sup>51</sup> See generally Frank Rich, *Smoking G.O.P. Guns*, N.Y. TIMES, June 29, 1995, at A21 (criticizing G.O.P. support of the "gun crazy counterculture").

<sup>52</sup> Cf. MACHIAVELLI, *supra* note 45, at 51 (writing that "[a] Prince, therefore, ought never to allow his attention to be diverted from warlike pursuits, and should occupy himself with them even more in peace than in war").

<sup>53</sup> But see Robert Cottrol & Ray Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 GEO. L.J. 309 (1991) (urging that the black community arm itself because of inadequate police protection and racist violence); Roy Innis, *Gun Control Sprouts from Racist Soil*, WALL ST. J., Nov. 21, 1991, at A14; Lori Montgomery, *More Blacks Say Guns are the Answer to Urban Violence*, HOUS. CHRON., July 9, 1995, at A1.

fire power among a minority of whites.<sup>54</sup> Even elite groups are arming themselves, hiring security guards, and retreating behind gates and walls.<sup>55</sup> I'm sure you've both heard of Murray and Herrnstein's 'high-tech Indian reservation.'<sup>56</sup> Right-wing fundamentalists have always been morbidly fascinated with the idea of apocalypse. Formerly, they defined it in terms of H-bombs and nuclear Armageddon. They preached fear of communists, the other main group that possessed such weapons. Now they don't talk in terms of H-bombs, but of race war."<sup>57</sup>

"It seems to me quite possible that we will have one," Kowalsky added. "They know this, are prepared for this possibility, and want to make sure their side wins."

"For the first time, a religious theory is being put forward for white supremacy," Rodrigo interjected. "It combines with the pseudoscientific one espoused by books like *The Bell Curve* to produce a mentality among whites that they are entitled to remain on top no matter what the population statistics show. Consider all the interest in our own Civil War, for example. PBS recently pioneered a series on the subject.<sup>58</sup> New books are coming out, including some excellent ones by Shelby Foote.<sup>59</sup> Why else such a revival of interest if people were not starting to think, at least on an unconscious level, that a new war is coming up?"

I looked up. "In South Africa, whites did amass weapons in preparation for armed resistance, and fundamentalist white churches in that country preached that whites had a spiritual imperative to preserve control. And that PBS series you mentioned, Rodrigo, featured mainly white heroes in several hours of installments. It showed only a little on Frederick Douglass and other black leaders who opposed slavery, arguing that the Union should fight to end that scourge."<sup>60</sup>

"Recent books about the civil rights revolution do the same thing," Rodrigo replied. "Jack Greenberg's otherwise fine book,<sup>61</sup> for example, em-

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<sup>54</sup> See generally Christopher John Farley, *Patriot Games*, TIME, Dec. 19, 1994, at 48 (discussing the rise of private militias).

<sup>55</sup> David Dillon, *Security For Sale*, DALLAS MORNING NEWS, June 19, 1994, at A1 (pointing out that gated communities prosper in our fearful society, but critics say they foster segregation and isolation).

<sup>56</sup> RICHARD HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE* 526 (1994) (observing that the increasing gap between the cognitive elite and inner-city blacks breeds racial divisiveness and hostility).

<sup>57</sup> See Gustav Niebuhr, *A Vision of an Apocalypse: The Religion of the Far Right*, N.Y. TIMES, May 22, 1995, at A8.

<sup>58</sup> *The Civil War* (PBS television broadcast, 1990).

<sup>59</sup> STARS IN THEIR COURSES: THE GETTYSBURG CAMPAIGN JUNE-JULY 1863 (1994); CHICKAMAUGA AND OTHER CIVIL WAR STORIES (Shelby Foote ed., 1993).

<sup>60</sup> *The Civil War*, *supra* note 58 (featuring mainly white political leaders, generals, and soldiers fighting bravely to maintain the northern attacks on southern positions).

<sup>61</sup> CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION (1994) (detailing the history of civil rights litigation by the NAACP Legal Defense Fund).

phasizes the role of whites in charting the course of the desegregation campaign. 'Look how much whites have sacrificed for blacks,' these books seem to say. This way of presenting history legitimizes white anger now. Blacks are depicted as ingrates who don't appreciate all that good white liberals have done for them. This enables them, as well as the Democratic Party, to look the other way, or even join in the opposition to minority gains. During the period just before the Civil War broke out, the South drafted local boys and armed them. That's how they got an army. The near future could witness much the same thing."

Kowalsky added, "We are seeing the beginnings of that now in the militia movement.<sup>62</sup> Private groups are buying high-tech weapons, training in the woods, developing their own ideology and leadership structure.<sup>63</sup> They keep in touch by e-mail, newsletters, and conventions.<sup>64</sup> They interpret every move by the civil rights community as an attack on them and their values. That's the advantage of an ideology that demonizes the other side. If you decide at the outset that X is an enemy, you begin to interpret X's every action as justifying your visiting violence on him. That's the lesson of Chief Sitting Bull and Wounded Knee. It's also that of the Japanese internment cases, which held, based on the slenderest evidence, that the mere existence of Japanese citizens living peaceably on the West Coast threatened national security.<sup>65</sup> You try your best to provoke the other side into responding. When they don't, you simply declare that milder and milder actions on their part are provocations. Eventually their mere existence is an outrage that cannot be ignored, as with the Japanese."

"That may have been true historically," I conceded. "But do you really think it could happen today? Your theory, Laz, may be a useful *interpretive* approach to understanding what is going on—all the goading and stiffening of the spine. Many whites are uneasy and spoiling for a fight. As a *psychological* hypothesis to explain all the muscle-flexing and general ugliness, what you say makes much sense. Threatened people do often look to pick a fight, to re-establish who's boss. But surely you can't think we are preparing literally for a race war, can you?"

"Only time will tell," Laz replied. "Consider what happened in the Ruby Ridge stand off in Idaho. Federal officials provoked the family until they reacted, and then they shot Randy Weaver's wife.<sup>66</sup> Of course, in that

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<sup>62</sup> See Farley, *supra* note 54 (describing the recent growth in militias and discussing their practices).

<sup>63</sup> *Id.*; see also CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (R. Delgado & J. Stefancic eds., forthcoming 1997) [hereinafter CRITICAL WHITE STUDIES].

<sup>64</sup> See CRITICAL WHITE STUDIES, *supra* note 63.

<sup>65</sup> See PETER IRONS, JUSTICE AT WAR (1983) (describing how wartime paranoia and outright lies allowed the internment of Japanese Americans).

<sup>66</sup> See David Johnston & Stephen Labaton, *FBI Shaken by Inquiry Into Idaho Siege*, N.Y. TIMES, Nov. 25, 1993, at A1; see also Steve Higgins, *Why the ATF Had To Act, Ignore the Myths, The Fact is the Branch Davidians were Dangerous*, WASH. POST, July 2, 1995,

case the shoe was on the other foot. But conservatives learned their lesson all too well. As your Huey Newton once said, 'It's not paranoia if they really are out to get you.' Hate crimes are increasing, as are incidents of campus racism and hate speech.<sup>67</sup> Every major city reports Rodney King type incidents in which white police beat men of color to death. One took place not long ago in liberal San Francisco.<sup>68</sup> African American columnist Carl Rowan recently described how white racism operates inside many political departments, including the elite federal Alcohol, Tobacco, and Firearms agency, which recently held a 'Good Ol' Boys Roundup' in the Tennessee mountains, featuring T-shirts with Dr. Martin Luther King's face behind a target and O.J. Simpson in a noose.<sup>69</sup> Another showed white cops arresting a black, sprawled across a police car, under the heading 'Boys on the Hood.'<sup>70</sup> A lawsuit featured evidence that ATF agents frequently used the word 'nigger' and placed Ku Klux Klan cards and other paraphernalia prominently in the offices of black agents.<sup>71</sup> Recent stories even suggest that the CIA may have played a role in starting the crack epidemic that has devastated black neighborhoods.<sup>72</sup> I'm afraid that my theory may literally come true, at a broad national level. You mentioned earlier, Professor, that our institutions, the law and the police, might serve as a bulwark against white supremacist repression. I'm afraid they may prove to be among the most enthusiastic supporters."

The waiter arrived to ask if we would like to order dessert. "What's good here that my doctor wouldn't disapprove of?" I asked.

Kowalsky and Rodrigo looked up sympathetically. "You could try the yogurt frullato. Giannina recommends it," Rodrigo suggested.

"Okay." The waiter took our orders—frullato for me, buñuelos with powdered sugar for my two young friends—and departed.

"Good choice, Professor," Kowalsky said. "You can have a bit of my confection, if you like."

at C3. Cf. MACHIAVELLI, *supra* note 45, at 57 ("For he who quells disorder by a very few signal examples will in the end be more merciful than he who from too great leniency permits things to take their course and so to result in rapine and bloodshed.").

<sup>67</sup> See MARI J. MATSUDA ET AL., *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* (1993); Isabel Wilkerson, *Racial Harassment Altering Blacks' Choices on Colleges*, N.Y. TIMES, May 9, 1990, at A1.

<sup>68</sup> See Susan Sward et al., *Parolee's Death Called Possibly Drug-Induced: Investigation Begins into Conduct of Police*, S.F. CHRON., June 7, 1995, at A1 (describing the story of a black man beaten to death by San Francisco police).

<sup>69</sup> See Carl Rowan, *Law Enforcement Needs to Clean Up Its Act*, DENV. POST, July 18, 1995, at B7; *Senate Panel to Investigate ATF Picnic*, WASH. POST, July 15, 1995, at A13.

<sup>70</sup> See Rowan, *supra* note 69.

<sup>71</sup> *Id.*

<sup>72</sup> See, e.g., Gregory L. Vistica & Vern E. Smith, *Was the CIA Involved in the Crack Epidemic?: A Newspaper Links the Contras to Cocaine*, NEWSWEEK, Sept. 30, 1996, at 21.



Rodrigo nodded his own agreement, then went on: "To summarize your point then, Laz, it's not just wild-eyed patriots and supremacists who are talking about holding the line, preserving America as a white society, and resisting the changes that would otherwise set in when the numbers of browns and blacks exceed those of whites. The cruder elements are arming, while conservative churches are preaching a return to early values with thinly veiled references to race. Thus, they are laying the theological basis for a race war. Conservatives across the board are taunting blacks and liberals, calling us balkanizers, tribalists, and barbarians. They are dismantling affirmative action and ethnic studies departments,<sup>73</sup> while cutting programs of critical importance to the inner city poor.<sup>74</sup> It does look like a coordinated effort to prod blacks, to provoke us into lashing back so that society can respond with armed force."

"Don't forget that legal and constitutional change will accompany the armed suppression," Laz added. "Constitutional amendments and new laws will assure that there cannot be a second uprising, ever. We may have already seen the beginning of this in bills authorizing new prisons and expanding the number of new police officers, reviving the death penalty, and providing mandatory sentences for crimes associated with the underclass of color. I hate crime, as you know, and think these measures are not a bad idea. But they're aimed just at blacks, something any self-respecting conservative should detest. English-only laws and ruthless immigration measures make things hard for Latinos and Asians.<sup>75</sup> Congress is even considering abolishing citizenship for the children of undocumented immigrants.<sup>76</sup> The thinly veiled purpose of the amendment is to keep America white."

"Laz," I said, changing course, "I wonder if you are familiar with the new eugenics movement, which advocates breeding controls for the underclass of color. New books sound the alarm. Our best citizens, as they call them, have only a few children per family, while immigrant and African American women have too many, with the result that our precious national gene pool is deteriorating.<sup>77</sup> Supposedly, we are losing several IQ

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<sup>73</sup> See KARST, *supra* note 4 (on the rollback of affirmative action); see STEPHANIC & DELGADO, *supra* note 17, at 45-81 (detailing these and similar campaigns and cutbacks); D'SOUZA, *supra* note 5 (on attacks on ethnic studies programs); JOHN K. WILSON, *THE MYTH OF POLITICAL CORRECTNESS: THE CONSERVATIVE ATTACKS ON HIGHER EDUCATION* (1995).

<sup>74</sup> See STEFANCIC & DELGADO, *supra* note 17, at 82-95.

<sup>75</sup> See generally Juan Perea, *Demography and Distrust: An Essay on American Language, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269 (1992); Abigail M. Thernstrom, *Bilingual Miseducation*, COMMENTARY, Feb. 1990, at 44.

<sup>76</sup> See Sam Howe Verhovek, *Stop Benefits for Aliens? It Wouldn't Be That Easy*, N.Y. TIMES, June 8, 1994, at A1.

<sup>77</sup> See HERRNSTEIN & MURRAY, *supra* note 56, at 351-68; BEN WATTENBERG, *THE BIRTH DEARTH* (1987) (surveying damaging economic, political, and international effects of decreasing birth rates in United States). For articles surveying the movement to attribute

points per generation.<sup>78</sup> These authors include Nobel Prize winners like William Shockley,<sup>79</sup> prize winning educational psychologist Arthur Jensen,<sup>80</sup> and writer and columnist Ben Wattenberg,<sup>81</sup> whose *Birth Dearth* sold well in conservative circles.”

Kowalsky added, “And English-only activist John Tanton, in a memo written a few years ago but only recently publicized, sounded the cry for whites to mobilize in the face of engulfment by what he saw as inferior races. I brought his ‘WITAN memo’<sup>82</sup> right here, just for you. In it he asks, ‘As Whites see their power and control over their lives declining, will they simply go quietly into the night? Or, will there be an explosion?’ He also asks, ‘Will the present majority peaceably hand over its political power to a group that is simply more fertile?’ and ‘[i]s advice to limit one’s family simply advice to move over and let someone else with greater reproductive power occupy the space?’<sup>83</sup> Cordelia Scaife May, a respected conservative philanthropist, went too far, in my opinion, when she sponsored a new edition of Raspail’s novel *Camp of the Saints*,<sup>84</sup> which features North African hordes sweeping over and destroying civilization.”<sup>85</sup>

“That I didn’t know,” I said. “But I read somewhere that early twentieth-century laws criminalized abortion in part because doctors wanted to control midwifery, but also because late Victorian era women were beginning to rebel against their traditional roles. Their desire to have

racial differences in educational achievement to genetics, see Ellis Cose, *Color-Coordinated ‘Truths’*, NEWSWEEK, Oct. 24, 1994, at 62; Geoffrey Crowley, *Testing for Intelligence*, NEWSWEEK, Oct. 24, 1994, at 56; Lynnell Hancock, *In Defiance of Darwin*, NEWSWEEK, Oct. 24, 1994, at 61; Thomas Morganthau, *IQ Battle*, NEWSWEEK, Oct. 24, 1994, at 52. *But see* STEPHEN JAY GOULD, *THE MISMEASURE OF MAN* 367–90 (1981) (analyzing the eugenics movement and refuting its premises, arguments, and conclusions); Richard Lacayo, *For Whom the Bell Curves: A New Book Raises a Ruckus by Linking Intelligence to Genetics and Race*, TIME, Oct. 24, 1994, at 66 (summarizing THE BELL CURVE’s arguments and presenting opposing views).

<sup>78</sup> See HERRNSTEIN & MURRAY, *supra* note 56, at 342–56 (describing “dysgenesis” or the downward shift in the distribution of cognitive ability being caused by certain demographic trends).

<sup>79</sup> See Richard Delgado et al., *Can Science Be Inopportune? Constitutional Validity of Governmental Restrictions on Race-IQ Research*, 31 UCLA L. REV. 128, 137–44 (1983) (discussing research by Shockley and Arthur Jensen regarding genetics and racial differences in intellectual capability, and analyzing the constitutionality of regulating such works).

<sup>80</sup> *Id.*

<sup>81</sup> See WATTENBERG, *supra* note 77.

<sup>82</sup> The WITAN memo is a paper that Tanton wrote for a secret organization called WITAN. The name refers to the Old English word *witenagemot*, meaning wise men who advise the king, and is ostensibly used to celebrate America’s Anglo-Saxon roots. See STEFANCIC & DELGADO, *supra* note 17, at 11.

<sup>83</sup> *Id.*

<sup>84</sup> JEAN RASPAIL, *CAMP OF THE SAINTS* (1973).

<sup>85</sup> *Id.* See also Ruth Conniff, *The War on Aliens: The Right Calls the Shots*, PROGRESSIVE, Oct. 1993, at 22.

fewer babies alarmed male legislators. Today, something similar is taking place. Middle-class white men and some women want to take away the right to a legal abortion. White women are still having too few babies, while black and brown women are having too many."

"The right to life movement counts very few black and Latina women," Rodrigo added.<sup>86</sup>

The waiter arrived with our desserts and to ask if we would like coffee. My two young friends ordered cappuccino, I a decaf. "Anytime after noon and I can't sleep at night," I explained.

Then Laz spoke up: "You see, I said I was an equal opportunity critic. I support much of what my fellow conservatives say and do, but not this. I felt an obligation to tell the two of you. I still believe in neutral principles, in rewarding hard work and treating all persons with similar respect. Everyone deserves the right to be treated as an individual and to have his or her fundamental humanity respected. But I'm alarmed at some of the steps my fellow conservatives are taking. There are better ways to return America to its individualist roots than to goad already suffering populations, until recently mired in slavery and Jim Crow laws, into what will prove to be a bloody and decisive defeat."

All three of us sat silently for a moment in the now nearly deserted restaurant. Then I asked a question that had been on my mind for some time: "And what about Latinos, Laz? We mentioned them briefly earlier. But, if you don't mind my saying so, you've been speaking in generalizations so far. I may agree with your basic premise that something frightening is in store and that this is the reason for all the pushing and shoving and goading going on right now. But you have been speaking in terms of 'people of color,' 'minorities,' and 'the poor community' as though they were all one. Somehow, I feel that Latinos are different. Don't you?"

### III. In Which Laz Refines His Thesis and Rodrigo Explains the Role Latinos May Play in the Conservative Backlash to Come

"I'm not sure," Laz replied. "I haven't known many Latinos, except for Rodrigo, who I gather is half one. I grew up in an eastern city in a tenement district full of Poles and Croatians. Rodrigo, what do you think?"

Rodrigo smiled. "The Professor asks a good question. It reminds us we must always guard against the danger of essentialism and assuming

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<sup>86</sup> See Mona Charen, *Meet the Changing Pro-Life Movement*, DET. NEWS, Nov. 21, 1996, at A11 (describing Dayton's Right to Life Chapter as having a lack of black people but trying to improve ties to the black community); *Pro-Life Diversity: More Black Women Joining Pro-Life Ranks*, ABORTION REP., Feb. 17, 1995, available in LEXIS, Legis Library, Apn File (discussing the rarity of black and Latina pro-life women).

that all minorities are the same.<sup>87</sup> I'm part Latin,<sup>88</sup> as you know, so ever since I returned here I've been following the fortunes of Chicanos, Puerto Ricans, Central Americans, and other Latino groups. Their relationship to the broader civil rights struggle, and to blacks, is complex."

"It certainly is," I agreed. "Sometimes Latinos and blacks are at each other's throats.<sup>89</sup> Other times they work together to challenge oppressive measures that threaten them both, such as the backlash against affirmative action.<sup>90</sup> How do you think all this bears on the racial troubles Laz thinks elite groups are trying to stir up?"

Rodrigo glanced at his friend. "I asked Laz the other day where he stood on the right-wing positions on immigration,<sup>91</sup> bilingual teaching,<sup>92</sup> and English-only.<sup>93</sup> He said he disagreed vehemently with his fellow conservatives on immigration—you know his family immigrated from an East European country with little money—and did not feel strongly on the other two. He said it's certainly in the interest of new immigrants to learn English as quickly as possible, but he didn't think forcing them to do so made sense. Instead we should be offering them help to do something most of them are highly motivated to do anyway. And he disagreed vehemently with California governor Pete Wilson's suggestion during the Proposition 187 campaign that all Californians be required to carry identity cards and to produce them on official demand, particularly when they are seeking a job, entering school, or requesting non-emergency health care.<sup>94</sup> I'm not putting words in your mouth, Laz, I hope?"

"Rodrigo's got it right," Laz said. "I'm certainly not an expert on Latinos, but there is something peculiar about the conservative position regarding them. It's similar to the one they are taking with respect to blacks—increasing their misery, hounding them, taking away things they hold dear. But there's also a different note, a sort of background noise

<sup>87</sup> See Delgado, *Sixth Chronicle*, *supra* note 1 (on relations between men and women).

<sup>88</sup> See Delgado, *Rodrigo's Chronicle*, *supra* note 1, at 1359–60 (introducing Rodrigo and his family); Delgado, *Eleventh Chronicle*, *supra* note 1 (noting that Rodrigo's father's family immigrated from the Caribbean and that his father speaks perfect Spanish).

<sup>89</sup> See, e.g., *Our Next Race Question: The Uneasiness Between Blacks and Latinos*, HARPERS, Apr. 1996, at 55 [hereinafter *Our Next Race Question*] (featuring contentious dialogue between Latino and black scholars Jorge Klor de Alva and Cornel West).

<sup>90</sup> A broad based coalition, including many Latinos and blacks, worked together in opposing Proposition 209, California's anti-affirmative action initiative. See *U.S. Politics: Women, Minority Groups Hail Their Coalition*, INTER PRESS SERV., Apr. 15, 1996, available in LEXIS, News Library, Wires File (describing a National Organization of Women (NOW) rally that united Latino, African American and many other groups in opposition to Proposition 209, otherwise known as the California Civil Rights Initiative or CCR1).

<sup>91</sup> See STEPHANIC & DELGADO, *supra* note 17, at 20–32.

<sup>92</sup> See *id.* at 29.

<sup>93</sup> See *id.* at 9–19.

<sup>94</sup> See Peter Bate, *U.S. Hispanics Unsettled by Immigration Vote*, REUTERS N. AM. WIRE, Oct. 27, 1994, available in LEXIS, News Library, Wires File.

emanating from right wing think tanks and leadership groups. It's an interference almost, and it's different. Latinos in some respects remind me of the 'coloreds' in South Africa.<sup>95</sup> Not a very exalted position, I concede, but let me throw the idea out for discussion."

We were silent for a moment, absorbing what Laz had said.

"It's a devastating metaphor," I said. "My heart sank when you said it. As you know, in the old South African regime, the 'coloreds'—Indian and Chinese immigrants and other non-black national origin groups—served as overseers and clerks in the oppressive regime of apartheid. They were treated a little better than blacks but not afforded the full status of whites.<sup>96</sup> And do you think this is what's in store for our Latino friends in the bleak racial future you foresee?"

"It could be," Rodrigo said. "For one thing, it would account for the recent phenomenon of right wing Chicanos and Latinos we're seeing."

"I assume you mean people like Linda Chavez,<sup>97</sup> Richard Rodriguez,<sup>98</sup> and Kevin Tebedo."<sup>99</sup>

"Them and many others," Rodrigo replied. "It would explain why certain issues are coming to the forefront right now, why it seems that Latinos are going to be next on the hot seat. We're next because our high birth rate and the relative ease of illegal immigration mean that our numbers will begin to exceed those of blacks by early in the next century.<sup>100</sup> If the political right can split Latinos off from blacks, this will be

<sup>95</sup> On the social stratification in preliberation South Africa, see PETER CARSTENS, *THE SOCIAL STRUCTURE OF A CAPE COLOURED RESERVE: A STUDY OF RACIAL INTEGRATION AND SEGREGATION IN SOUTH AFRICA 6-16* (1966); ALAN PATON, *TOO LATE THE PHALAROE* (1953); SHEILA PATTERSON, *COLOUR AND CULTURE IN SOUTH AFRICA: A STUDY OF THE STATUS OF THE CAPE COLOURED PEOPLE WITHIN THE SOCIAL STRUCTURE OF THE UNION OF SOUTH AFRICA* (1969). On South African society generally, see HUMAN SCIENCES RES. COUNCIL, *SOUTH AFRICAN SOCIETY: REALITIES AND FUTURE PROSPECTS* (1987).

<sup>96</sup> See PATTERSON, *supra* note 95.

<sup>97</sup> Linda Chavez directs a conservative think tank and speaks and writes on the evils of special treatment and bilingualism. See Linda Chavez, *Bilingual Education Gobbles Up Kids, Taxes*, USA TODAY, June 15, 1994, at 15A (outlining her reasons for opposing bilingual education). See also STEPHANIC & DELGADO, *supra* note 17, at 57, 60-61, 63 (describing Chavez's various writings and conservative activism).

<sup>98</sup> Richard Rodriguez, author of *HUNGER OF MEMORY* (1981) and *DAYS OF OBLIGATION: AN ARGUMENT WITH MY MEXICAN FATHER* (1992), opposes affirmative action and bilingual education. See Olando Ramirez, *Hispanic Intellectual Enjoys Swimming Against the Tide: Richard Rodriguez Says Bilingual Education and Affirmative Action Are Hindering Assimilation*, PRESS-ENTERPRISE, Oct. 15, 1995, at E01, available in LEXIS, News Library, Curnws File (discussing Rodriguez's opposition to affirmative action and bilingual education as obstacles to assimilation).

<sup>99</sup> Kevin Tebedo has been active in anti-gay advocacy and other conservative affairs in Colorado. See, e.g., Joan Biskupic, *Gay Rights Case Closely Watched at High Court*, WASH. POST, Oct. 10, 1995, at A1; James Brooke, *Colorado Is Engine in Anti-gay Uproar*, N.Y. TIMES, Oct. 11, 1995, at A18.

<sup>100</sup> See Special Issue, *supra* note 44, at 15; Brimelow, *supra* note 44, at 62-65. On the

a big coup. Otherwise, the combined numbers of people of color would soon make a formidable force.”

“Please don’t take this the wrong way, Rodrigo,” I said. “I know you identify with your Latin roots. But why would society have anything to fear from Latinos? By and large your people have been a quiet, hardworking, peaceable group. Chicano activism, for example, has taken mainly the form of an occasional high school walkout or a gathering of farm workers standing outside supermarkets urging shoppers not to buy grapes. Hardly at the level of the Black Panthers, Louis Farrakhan, and urban riots—things that strike fear at the heart of white power elites.”

“It’s true, Professor,” Rodrigo conceded. “We’ve not seen the same level of militancy you’ve seen with blacks. But the potential is always there. Latinos have become increasingly restless and willing to fight back. There are more Latino leaders, professors, and lawyers—intellectuals who could lead an upsurge of activism in concert with blacks. In our own field, Professor, a new organization, the ‘Lat-Crits,’ has recently sprung up. They are applying the powerful insights of Critical Race Theory to the situation and problems of Latinos.<sup>101</sup> They are analyzing structures such as the black-white binary,<sup>102</sup> the civil polity model of immigration law,<sup>103</sup> and the legal bases for challenging English-only and English preference rules.<sup>104</sup> They are urging solidarity and even nationalism within and among the various Latino communities.<sup>105</sup> If a race war comes and Latinos stand shoulder to shoulder with blacks, the whole thing could take longer and be bloodier than if only blacks and a few sympathizers had to be put down. If Latinos can be cowed into submission or better yet, bought off beforehand, so much the better for whites.”

“That all seems plausible. But do you really think that conservatives are reacting merely to the *potential* for Latino resistance?”

“Well, there could be another reason. Have you read about the conservative fixation, bordering on obsession, with Latin America?”

I must have looked blank, for Rodrigo continued: “In the mid-1980s a number of young conservatives did tours of duty in Latin America.<sup>106</sup>

increase in Latino immigration, see BRIMELOW, *supra* note 44, at 59–62; IMMIGRANTS OUT!, *supra* note 16, at 344.

<sup>101</sup> See, e.g., Jean Stefancic, *Latino-Critical Theory: An Annotated Bibliography*, 85 CAL. L. REV. (forthcoming 1997) (on file with author).

<sup>102</sup> See Juan Perea, *Ethnicity and the Constitution: Beyond the Black and White Binary Constitution*, 36 WM. & MARY L. REV. 571 (1995).

<sup>103</sup> See Richard Delgado, *Rodrigo’s Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship and the Black-White Binary*, 75 TEX. L. REV. (forthcoming 1997).

<sup>104</sup> See BILL PIATT, *ONLY ENGLISH? LAW AND LANGUAGE POLICY IN THE UNITED STATES* (1990).

<sup>105</sup> See RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS 450–51* (3d ed. 1988).

<sup>106</sup> See STEFANCIC & DELGADO, *supra* note 17, at 123 (noting one conservative student activist’s 1984 trip to El Salvador to endorse right-wing presidential candidate).

Many of them came away convinced that the region had a frightening potential for social unrest."<sup>107</sup>

"Funniest thing," I said ironically. "Many of those countries are controlled by vicious military regimes in concert with a few immensely wealthy families. The gap between the wealthy and the poor is even greater than it is here."

"Some conservatives warned that unrest and disruption could break out in that region, causing hordes of brown-skinned refugees to pour across our borders. They feared that socialist regimes like Cuba might emerge throughout that region and that local Chicanos and Central Americans might join forces with their south-of-the-border compatriots, opening a sort of second front here.<sup>108</sup> In his Witan memo,<sup>109</sup> John Tanton also warned of our rapid breeding rate. 'Perhaps this is the first time,' he queries, 'in which those with their pants up are going to get caught by those with their pants down?'"<sup>110</sup>

"Distasteful," Laz said with a grimace. "No wonder he was drummed out of certain mainline conservative organizations."<sup>111</sup>

"Others, however, welcomed him back,"<sup>112</sup> Rodrigo pointed out. "It could be this fear of Latin America that drives part of the current crack-down on an otherwise peaceful group."

"The carrot and the stick," I said. "Another old strategy."

"Exactly," Rodrigo said. "English-only laws and referenda like California's Proposition 187 tell Latinos that they must not make trouble, that their role is to blend in as soon as possible."

"To assimilate, in other words," I said.

"Right. To learn English, live in white neighborhoods, join the consumerist culture. And, in contrast to blacks, assimilation is an option with many Latinos. We have a high rate of intermarriage. And many of us look white."

"Or at least not black," I said.

"Something in between. The idea is to coerce Latinos to go the one way and not the other, to identify with the white overlords and not the

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<sup>107</sup> See *id.* 17 at 123 (secretary of the right-wing Council for Inter-American Security referring to Central American conflicts as a phase of World War III); Vistica & Smith, *supra* note 72, at 21 (referring to CIA Director William Casey's "obsession" with the Sandinistas during the 1980s).

<sup>108</sup> See STEFANCIC & DELGADO, *supra* note 17, at 16-17, 121-24 (discussing conservative organizations' efforts to link right-wing foreign policy with English-only and campus conservatism movements domestically).

<sup>109</sup> See discussion *supra* note 82.

<sup>110</sup> STEFANCIC & DELGADO, *supra* note 17, at 11.

<sup>111</sup> *Id.* at 12 (describing Tanton's departure from English-only group, U.S. English, as a result of his controversial Witan paper).

<sup>112</sup> *Id.* at 16 (describing Tanton's subsequent role in founding English Language Advocates, an even more hard line English-only group than U.S. English).

black resistance. Many of us are that way already; we try to be suave and ingratiating, like Ricardo Montalban.”

“Now I see the parallel Laz was drawing to the class system in South Africa. The idea is to punish Latinos for not fitting in and reward them when they go along with the dominant group. They then can be allowed to hold certain jobs and serve as buffers between the white overlords and the black underclass.”

“Do you suppose this accounts for the many conservatives in prominent positions who are adopting Hispanic children?”<sup>113</sup> Rodrigo asked.

“It could,” I replied. “They may be modeling, consciously or not, assimilationist behavior. They are saying, if you behave, I’ll take you in. They would never adopt a black kid. But they desperately don’t want Latinos opening a second front right now, at least not until they’ve taken care of business with the blacks.”

“Tension is running high right now between Latinos and blacks,” Rodrigo mused. “A recent colloquy in a national magazine featured leading Latino theorist Jorge Klor de Alva discussing black-brown tensions with African American Studies professor Cornel West.<sup>114</sup> Could it be that on some level the two groups realize the roles elite groups have in mind for them?”

“Maybe that’s what Laz called ‘background noise,’” I ventured, “something that goes on just outside consciousness, an unstated realization of trouble brewing ahead.”

“Speaking of trouble brewing,” said Rodrigo, draining his cup, “I’ll be in some myself if I don’t get back to campus within . . . ” and he looked at his watch, “fifteen minutes. Giannina and I ordered tickets for El Teatro Campesino. The campus box office is holding our tickets until this afternoon. I’ve heard the production actually has to do with some of the things we’ve been talking about, including Proposition 187, immigration reform, and the way those issues have been splitting the civil rights community. You could join us, Laz, if you want.”

“I’d love to,” Laz said. “I’ve heard great things about them. But I’m on the road with the moot court team all next week.”

“In that case,” said Rodrigo, “I’m afraid we’d better be going. I’ll just sign the check. It’s on the law school. You’re a speaker, Laz; and you, an honored guest, Professor.”

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<sup>113</sup> See, e.g., *Bush Introduces 3 Grandchildren as ‘Little Brown Ones,’* L.A. TIMES, Aug. 16, 1988, at A1.

<sup>114</sup> See *Our Next Race Question*, *supra* note 89 (Klor de Alva and West disagreeing on the usefulness of racial identities in combatting racism against Latinos and blacks respectively); cf. Denise Magner, *Labor Leaders and Academics Seek a New Alliance*, CHRON. HIGHER ED., Oct. 18, 1996, at A11, A12 (black academic Orlando Patterson urging the left to “take a position” on immigration and consider its effects on U.S. workers’ wages).



We walked back to the law school together, our silence broken only by my commenting about being glad Laz believed in equal treatment—otherwise we would not have heard his critique of his own movement—and Rodrigo's request that Laz try to rein in a certain co-panelist, who I gather was famous for longwindedness.

As luck would have it, the afternoon's panel turned out to be technical and a little outside my field. I listened as best I could, but my mind kept returning to my lunchtime conversation and my companions' interpretations of a wide spectrum of events, actors, organizations, and writers on the right. I recalled how we had begun with a simple riddle: Why are conservatives trying to get rid of affirmative action, the goose that laid and reliably continues to lay the golden egg for them? I thought about how Laz had drawn our attention first to the draconian rollbacks in welfare, ones going far beyond what is necessary to save the budget or provide the poor with an incentive to work. He noted how conservatives conveniently manage to exempt their favorite industries, the military, and high-income people from cutbacks, and how the rich are the main beneficiaries of governmental largesse.

I remembered how Kowalsky had then offered his chilling explanation for all this, namely that conservative consciousness has now reached a tacit decision—not so much a conscious conspiracy as the overall effect of a group mentality—to push communities of color and the poor until they fight back. Their response would then provide the justification for harsh measures and, perhaps, even a race war. Otherwise, how can one explain, for example, the conservative campaign to end affirmative action, a program that until now had provided them with benefits, both rhetorical and political? How else could one explain Supreme Court decisions reversing a legacy of Warren Court solicitude, or measures like California's Proposition 187 and similar proposals to limit reproduction on the part of poor blacks and Latinos? And how else can one explain the advent of militia groups and fundamentalist religion calling for a return to and defense of traditional values? I reflected on the picture that had emerged over the course of our conversation like a photograph from a darkroom tub. I wondered if society was really headed toward a conflagration aimed at assuring that power does not change peaceably when minority numbers begin to exceed those of whites a few decades from now. Was Kowalsky, the brilliant young "equal opportunity trasher," too hard on his fellow conservatives? Or would elite whites achieve much the same thing by stirring up division among outgroups, minorities, and Jews so that the next race war would be among minorities fighting for the scraps, much like what happened in South Africa before the day of reckoning?

What role would Latinos, the other major group of color, play in the years ahead? Would they opt for the demeaning status of functionaries and white wanna-bes that Rodrigo had warned might be in store for them?

I sincerely hoped not: a people with a great tradition deserved better. Perhaps the cultural distaste for the “pocho”<sup>115</sup> and the ingrained pride and attachment many Latinos feel for their culture would protect against the fate that Rodrigo had warned against. I recalled how even liberal social workers attempted to create Mexicans as a “problem” group requiring help after the United States closed its doors to immigrants, threatening unemployment in the Americanization industry. The number of master’s theses proliferated, and social workers began specializing in this new problem group in an effort to teach them American ways of speaking, cooking, and dressing, when they had perfectly good recipes and family structure of their own.<sup>116</sup> Then, Latinos had resisted pressures to acculturate. Would they do so again?

I did not see my two young friends much more that day. After the afternoon session ended, they were both engrossed in herding all the conference attendees over to the dormitory facility for a barbecue, then an impromptu session in one of the lounges on “an important matter that just came up.” I wondered if it had to do with the subject of our noontime conversation, and if so what the other conference participants would make of Laz and Rodrigo’s hypothesis. I even wondered, in passing, about Kowalsky’s motives in spelling out how his fellow conservatives’ actions might produce a racial showdown. The brilliant young conservative seemed genuinely sympathetic to minority causes and the poor. But why had he brought the news to us and to the conference of young, left-wing professors of color? Was it out of concern and sporting justice? With a shudder, I realized that any overreaction on our part—sounding the alarm to our communities or arming, for example—could subject us to withering criticism as alarmists and demagogues. It could even, paradoxically, bring about the very repression against which Kowalsky had warned.

I arrived at the airport with my head spinning and a tablet full of notes. While walking down the nearly deserted concourse to take my late-evening flight back home, I roused myself from the introspective daze I had been engrossed in since getting into the shuttle outside the law school. In front of my eyes, in a display behind the locked window of a small concourse bookstore, I saw *The Turner Diaries*,<sup>117</sup> which deals with the prospects for an upcoming race war and is authored by a right-wing novelist. I noted the price, publisher, and order number posted on the display and resolved to buy the book as soon as I got home.

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<sup>115</sup> “Pocho” is a slang term for an individual of Mexican extraction who does not speak Spanish and has lost touch with his or her roots.

<sup>116</sup> For an excellent discussion of this and other efforts by Anglo society to coerce or reward Mexican American conformity, see CAREY MCWILLIAMS, *NORTH FROM MEXICO: THE SPANISH-SPEAKING PEOPLE OF THE UNITED STATES* 189–304 (1968).

<sup>117</sup> ANDREW MACDONALD, *THE TURNER DIARIES* (1978).

